IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

CRL.A.No. 650 of 2003()

SC.173/2000 of ADDL. SESSIONS COURT (ADHOC), KASARGOD

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APPELLANT: ACCUSED

T.K.HASHIM, S/O. MUHAMMED HAJI,
EDAKKAD, KANNUR DISTRICT.

BY ADV. SRI.M.THAMBAN
SMT.T.SUDHAMANI

RESPONDENTS: COMPLAINANT & STATE

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1. THE STATION HOUSE OFFICER,
CHANDARA POLICE STATION.

2. THE STATE OF KERALA REP.BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKARA MOHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 650 of 2003

Dated this the 20th February, 2007.

J U D G M E N T

The accused in S.C.No.173/2000, on the file of the Additional Sessions Court, (Ad hoc-I), Kasargod, is the appellant. He was found guilty of the offence punishable under Section 55(a) of the Abkari Act, in short 'the Act', and, therefore, was convicted and sentenced to undergo rigorous imprisonment for a period of three years, and also pay a fine of Rupees One Lakh, in default, to undergo rigorous imprisonment for a further period of six months. The same is under challenge through this appeal.

2. The brief prosecution case is that, on 27.5.1999, at about 7.45 p.m., the accused was found in possession of 10 packets of Karnataka arrack, each packet containing 100 ml. capacity , wrapped in M.O.4 paper, in front of the Trikaripur Railway Station. Accordingly, the accused was arrested and the contraband seized under Ext.P3 seizure mahazar. Ext.P2 scene mahazar was also prepared attested by PW.3. PW.2, a police constable of Chandera Police Station, accompanied PW.4, the detecting officer. The lower court relying on

State of Kerala v. Choyunni (1980 KLT 107), held that the uncorroborated testimony of a single witness, if found wholly reliable, could be used for entering into a conviction against the accused. Therefore, the court below convicted and sentenced the accused, as stated above.

3. I fully agree that if there is untainted evidence, the same could be accepted and acted upon, in entering into a conviction. In this case, the evidence is that of PW.2. PW.4, the investigating officer, also corroborates to the version of PW.2. PW.3 is an independent witness who attested Ext.P2 scene mahazar. He conceded in the cross examination that he is accused of an offence, for having assaulted an injured, the appellant, in this case. Therefore, the evidence of PW.3, an independent witness, has to be cautiously appreciated. Ext.P3 seizure mahazar is not corroborated by any independent witness. There is no explanation available, why the prosecution failed to examine the independent witness, who attested Ext.P3 seizure mahazar of the contraband. It is true that no defence evidence has been adduced. Though the appellant has stated that he had enquired about the matter to the police, when some others were questioned, the appellant was also caught by his neck, and was

arrayed as an accused. But, when I appreciate the evidence, as a whole, I find that the seizure of the contraband, the arrest of the accused, and the whole circumstances placed against the accused, create a suspicion. I agree with the observations of the court below that no suggestion was made to PW.3 regarding the statement given by the appellant during his examination under Section 313 Cr.P.C. But even without defence evidence, the whole prosecution evidence is doubtful. Therefore, I extend the benefit of this doubt to the appellant, accused.

4. In the result, the impugned judgment, as well as the conviction and sentence therein, under Section 55(a) of the Act, is set aside. The appellant, accused, is set at liberty forthwith, cancelling his bail bond.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.

J.M. JAMES, J.

Criminal Appeal No. 650 of 2003

J U D G M E N T

Dated: 20th February, 2007.